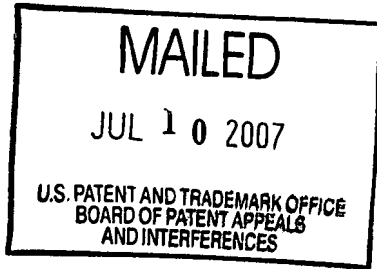


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte: DAVID W. ZEITLER

Application No. 10/679,613

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on June 8, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

APPEAL BRIEF

Appellant filed an Appeal Brief dated October 13, 2004, in response to the Final Rejection mailed April 30, 2004. The Appeal Brief is not in compliance with the new rules of 37 CFR § 41.37(c) effective September 13, 2004.

37 CFR § 41.37(c) states:

(a)(1) Appellant must file a brief under this section within two months from the date of filing the notice of appeal under § 41.31.

* * *

(c)(1) The brief shall contain the following items...of this section:

(v) ***Summary Of Claimed Subject Matter.*** A concise statement of each ground of rejection presented for review.

An in-depth review of the Appeal Brief indicates that the following sections are missing from the Appeal Brief . The Appeal Brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claims argued separately, every means plus functions and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with references to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).

(vi) ***Grounds of rejection to be reviewed on appeal.*** A concise statement of each ground of rejection presented for review. The statement cannot include any argument concerning the merits of the ground of rejection presented for review.... See (37 CFR 41.37(c)(1)(vi)).

* * *

(ix) ***Evidence appendix.*** An appendix containing copies of any evidence submitted pursuant to ' ' 1.130, 1.131, 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See ' 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal. See (37 CFR 41.37(c)(1)(ix)).

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(x) ***Related proceedings appendix.*** An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

Section 37 CFR § 41.37(c)(2)(d) further states:

(d) If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, appellant will be notified of the reasons for non-compliance and given a time period within which to file an amended brief. If appellant does not file an amended brief within the set time period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the appeal will stand dismissed.

When the Office holds the brief to be defective solely due to appellant's failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice.

Appellant may file a paper to correct the above identified deficiencies. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and §711.02(b).

TERMINAL DISCLAIMER

A Terminal Disclaimer was filed on June 21, 2004. It is not clear from a review of the record that the Terminal Disclaimer has been considered and/or that such consideration has been acknowledged. Clarification of the record is required.

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CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the examiner to:

- 1) hold the Appeal Brief of October 13, 2004; defective;
- 2) notify applicants to file a "paper" in compliance with 37 CFR 41.37;
- 3) for the Examiner to issue and mail a form PTOL-90 acknowledging consideration of any paper, as well as, consideration and acknowledgment of the Terminal Disclaimer filed June 21, 2004; and
- 4) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES



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